



1776 K STREET NW
WASHINGTON, DC 20006
PHONE 202.719.7000
FAX 202.719.7049

7925 JONES BRANCH DRIVE
McLEAN, VA 22102
PHONE 703.905.2800
FAX 703.905.2820

www.wileyrein.com

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Jan Witold Baran
202.719.7330
jbaran@wileyrein.com

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BY HAND DELIVERY

Anthony Herman, Esq.
General Counsel
Federal Election Commission
999 E Street NW
Washington, DC 20463

Re: MUR 6374 (Joe P. Murphy)

Dear Mr. Herman:

This office represents Mr. Joe P. Murphy in the above-captioned Matter Under Review ("MUR"). We are responding to the complaint filed on May 8, 2013 by Citizens for Ethics and Responsibility in Washington and the Campaign Legal Center ("Complaint").¹

The Complaint alleges that Mr. Murphy made contributions totaling more than \$46,200 to federal candidates during the 2011-12 election cycle in violation of the Federal Election Campaign Act of 1971, as amended, and Federal Election Commission ("FEC" or "Commission") regulations. Although not specifically alleged, the Complaint also implies that Mr. Murphy made contributions totaling more than \$70,800 to federal political action committees ("PACs") and federal political party committees during the 2011-12 election cycle. For the reasons outlined below, the Commission should dismiss this matter with respect to Mr. Murphy.

I. Mr. Murphy is Complying with the Biennial Contribution Limits.

The Complaint alleges that Mr. Murphy contributed a total of \$57,445 to federal candidates and \$134,555 to federal PACs and party committees during the 2011-12 election cycle. Upon learning of the Complaint, Mr. Murphy asked counsel to review his contribution history and begin taking the appropriate steps to ensure compliance with the biennial contribution limits.² A portion of many of Mr. Murphy's contributions should have been attributed to his wife, Mrs. Brenda

¹ On May 30, 2013, the Commission granted our request for an extension of time to respond to the Complaint until June 26, 2013.

² According to our research, Mr. Murphy actually contributed a total of \$55,000 to federal candidates and \$142,057 to PACs and parties during the 2011-12 election cycle.

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Murphy. Recipient committees were so advised. The reattributions will appear on future reports filed by the committees. Mr. Murphy also requested refunds where appropriate (\$2,500 from Ted Cruz for Senate, \$1,000 from Citizens for Josh Mandel, and \$500 from the Monterey County Republican Central Committee). In addition, Mr. Murphy discovered several reporting errors and requested that these errors be corrected so that the public record is accurate.

As the chart below indicates, Mr. Murphy is in compliance with the biennial contribution limits.

	Alleged Total Contributions as of 12/31/12	Reattributions and Refunds	Current Total Contributions	2011-12 Contribution Limit
Total Federal Contributions	\$197,057.00	(\$80,279.48)	\$116,779.52	\$117,000.00
Candidate Contributions	\$55,000.00	(\$9,000.00)	\$46,000.00	\$46,200.00
PAC/Party Contributions	\$142,057.00	(\$71,277.48)	\$70,779.52	\$70,800.00

An itemized list of Mr. Murphy's contribution history is attached as Exhibit A.

Mr. Murphy is taking steps to ensure that his 2013-14 election cycle contributions are properly and timely attributed and will stay within the biennial contribution limits.

II. The FEC Should Exercise Its Prosecutorial Discretion and Dismiss the Complaint with Respect to Mr. Murphy.

The FEC should exercise its prosecutorial discretion under *Heckler v. Chaney*, 470 U.S. 821 (1985), and dismiss the Complaint with respect to Mr. Murphy for two reasons. First, any contributions in excess of the biennial contribution limits were inadvertent and followed by corrective steps to comply with such limits. Second, the Supreme Court will decide this fall whether the biennial contribution limits are unconstitutional.³ See *McCutchen, et al. v. Fed. Election Comm'n*, 2012 WL

³ In filing this response, Mr. Murphy does not waive his right to assert a constitutional defense at a later time based on the Supreme Court's forthcoming decision in *McCutcheon*.



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4466482 (D.D.C. Sept. 28, 2012), *appeal docketed*, No. 12-536 (U.S. Oct. 26, 2012). At a minimum, the Commission should not take any further action with respect to the Complaint until the Supreme Court has issued its opinion in *McCutcheon*. Furthermore, even if the biennial contribution limits are upheld by the Supreme Court, the circumstances surrounding Mr. Murphy's contributions warrant his dismissal from this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jan. Witold Baran".

Jan. Witold Baran
Brandis L. Zehr

Attachment